IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8570 OF 2005

Shankar Dagadu Pawar & Ors. .. Petitioners.
Vs.
Mahadu Dagadu Pawar & Ors. .. Respondents.

Mr.A.A.Garge for the petitioners.
Mr.P.B.Shah for respondent no.1.

CORAM : D.B.BHOSALE, J.

DATED : 12TH SEPTEMBER, 2006

P.C.:

. Heard learned counsel for the petitioners and respondent no.1.

2. Rule, returnable forthwith. By consent of the parties taken up for final hearing. Mr.Shah, learned counsel waives service for respondent no.1.

3. This petition is directed against the order dated 20.9.2005 by which the trial Court has allowed the application filed by the petitioners-plaintiffs under Order 6 Rule 17 partly. The petitioners-plaintiffs have filed the suit for partition and separate possession of their share in the joint family properties. By way of an amendment the petitioners sought to introduce three amendments

out of which the first amendment has been allowed by the trial Court. Insofar as the second amendment is concerned, it consists of paragraph 3(a) and 3(b) to be added in the pleadings. By paragraph 3(a) the petitioners have stated that some properties of the joint family were acquired and the amount of award has been received by some of the members of the joint family. In paragraph 3(b) the petitioners have stated that one of the defendants died during pendency of the suit and, therefore, his share will change and he sought to make that change by way of the said paragraph. By the third amendment, the petitioners sought to introduce paragraph 7(a) and 7(aa) in the pleadings. In these two paragraphs also the petitioners have claimed 1/3 share even in the compensation received by the other members of the family in the land acquisition proceedings. Mr.Shah, learned counsel for respondent no.1 vehemently opposed the amendment stating that the amendment sought is not only illegal but it was sought at belated stage. He further submitted that to claim share in the compensation received in the Land Acquisition proceeding the only remedy available to the petitioners is to file appropriate proceedings under section 30 of the Land Acquisition Act. I perused the order as also the application and other material placed before me. It is clear from the impugned order

that the learned Judge without deciding whether such an amendment is necessary has expressed certain opinions and entered into discussion on merits of the amendment. In cases like this the Court should take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court and the Supreme Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court. The Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a findings on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment or not to be adjudged at the stage of allowing the prayer for amendment. Moreover, the Court is expected to apply the basic and cardinal test as to whether such amendment is necessary to decide the real controversy between the parties. If it is, the amendment must be allowed; and if it is not, the amendment should be refused. This cardinal principle has not been followed by the trial Court. Since the Court has entered into a discussion into the correct or falsity of the case in the amendment, I have no

other option but to interfere with the order passed by the trial Court. In the present case, in my considered opinion, the amendment would be necessary for deciding the real dispute between the parties and/or for deciding the suit for partition. In any case the proposed amendment would not cause any prejudice to other side or it does not defeat the legal right accrued to them. In the circumstances the writ petition is allowed. The order impugned is quashed and set aside. The petitioner should carry out amendment within four weeks from the date of receipt of this order. It is open for the defendants to file additional written statement, if any, within four weeks therefrom. The trial Court shall proceed with the hearing of suit and shall decide the same expeditiously.

. Rule is, accordingly, disposed of.

(D.B.Bhosale, J.)